**Minutes of the 89th meeting of the Board of the EHRC**

**14 May 2020**
**Via video conference using WebEx**

**Attending:**

***Commissioners***
David Isaac, Chair
Suzanne Baxter
Pavita Cooper
Alasdair Henderson
Rebecca Hilsenrath, Chief Executive Officer
Susan Johnson
Helen Mahy
Mark McLane
Lesley Sawers
Caroline Waters

***Officers***
Dean Button, Director – (Item 8 only)
Malcolm Cornberg, Executive Director - Corporate Services
Melanie Field, Executive Director - Wales and Strategy and Policy
Tessa Griffiths, Director - Strategy and Governance
Callum MacInnes, Principal – Corporate Governance
Alasdair MacDonald, Director - Policy (Item 9 only)
Libby McVeigh, Director - Strategy and Governance
Alastair Pringle, Executive Director - Scotland and Corporate Delivery
Sarah Whelan, Senior Associate – Corporate Governance

***Guests***
Alison Parken, Interim Chair - EHRC Wales Committee
Charles Ramsden - Government Equalities Office (Absent for Item 6.)

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## 1. Chair's introduction

1.1 David Isaac welcomed attendees, noting the return of Libby McVeigh to the role of Director of Strategy and Governance. Alison Parken continued to attend as Interim Chair of the Commission's Wales Committee, pending the appointment of a Wales Commissioner.

## 2. Apologies for absence

2.1 No apologies were received.

## 3. Declarations of interest

3.1 Following the annual review process, the updated declaration of interests for Commissioners were circulated to the Board prior to the meeting. No declarations were made additional to those already registered.

## 4. Minutes of the 88th Board meeting and the Revised Business plan Board call.

4.1 Lesley Sawers to be added to the attendee list for the minutes of the 88th Board meeting of 11 March 2020 (EHRC 89.01). **Action: Sarah Whelan.**

4.2 Amendment to 8.1 a) IV which stated "and plans to have further conversations with the Welsh Education Minister to align this guidance with recently published work on religion in schools" to be changed to 'sexuality and relationships', not 'religion'. **Action: Sarah Whelan.**

4.3 Other than the above amendments, minutes were agreed as an accurate record.

4.4 Minutes from the Board call of 23 April 2020, on the revised business plan, were agreed as an accurate record.

4.5 It was noted that minutes / actions from Board calls taking place outside of formal Board meetings need to be logged formally if this was not already being done. **Action: Callum MacInnes.**

## 5. Actions arising

5.1. The Board reviewed the log of actions arising from the previous Board meetings (EHRC 89.02). The Board were advised that the actions log currently showed some duplication for historic reasons but that the Corporate Governance Team were in the process of tidying this up ahead of the next Board meeting.

5.2. The Board enquired on the following actions:

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a) *88/8 b) VII - Transgender guidance: It was agreed that discussion should take place with Government Equalities Office (GEO) on their views with regards to publishing the Commissions transgender guidance in Scotland only. In Hand - To be updated via July's CEO report.*

Members requested an update on the transgender guidance work. The executive advised that this was deprioritised due to the current coronavirus pandemic and reallocation of work across the Commission. Melanie Field advised that the judicial review at the High Court against Oxfordshire County Council has been halted as the Council has withdrawn its guidance, and there is now more focus on the Commission's work as a result. Work is ongoing to consider the options for publishing our guidance, particularly as the Commission has received a further request from the Scottish Government to do so. Melanie Field will discuss further with the Government Equalities Office (GEO). **Action: Melanie Field. An update will be provided at the July Board.**

b) *Actions delayed / changed due to pandemic: Future of the Human Rights Act; Future inquiries; Diversity on public appointments and barriers faced by some applicants; Revised KPIs for 2020/21; EASS Helpline and Gender pay gaps.*

Members queried the work regarding the diversity on public appointments. They understood why this work had been paused but emphasised that the Commission needed to be mindful that diversity may be put to one side to rush appointments through during the current climate. **Action: Rebecca Hilsenrath. To consider this point and feedback.**

## 6. Governance and assurance item

### 6.1 Legal Investigations update.

6.1.1 Suzanne Baxter and Alasdair Henderson updated the Board on the BBC and Labour party Investigations. Updates were provided on the progress of the investigations, timelines and next steps.

6.1.2 The Board requested a separate Board call to discuss the investigations in more detail. **Action: Alastair Pringle / Sarah Whelan.**

### 6.2 Updates by exception from Committee/CWG/Lead Commissioners

6.2.1 The Board agreed to the formal delegation of sign-off of the Annual Report and Accounts to ARAC and the Chair.

6.2.2 Alasdair Henderson commended the work done on the Treaty Monitoring Impact report, which had been previously shared with the Board. He advised the Treaty Tracker is now going into its second phase of the project. It was

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agreed that a further discussion on this project would be helpful at a future meeting.

6.2.3 The Chair commended the Disability Advisory Committee's (DAC) Annual report, produced by Rachel Perkins. The Board were grateful to DAC for their work.

## 7. Executive Updates

### 7.1 Chief Executive's Report:

7.1.1 Rebecca Hilsenrath presented the CEO's report on strategic issues and performance (EHRC 89.05). An impact report was also shared prior to the meeting for information. The Board had reviewed the CEO's report ahead of the meeting. The following issues were considered further:

a) **Engagement with the Women and Equalities Select Committee and Government Equalities Office**:

I. The Commission gave evidence at the first newly constituted strategic session of the Women and Equalities Select Committee on 18 March 2020, and is continuing to engage closely with the new Chair, Caroline Nokes.

II. Ongoing conversations were taking place with the GEO regarding the impact of the current climate on their work and the views of the current Secretary of State of Women and Equalities with regard to the Gender Recognition Act (GRA). The Commission have been advised that a smaller, research and data focused approach was planned for the Equalities Hub.

III. Charles Ramsden advised that the Secretary of State's views on the GRA have recently been expressed in the media and a response by the UK Government to the consultation on this is expected soon. Given the current climate, it had been difficult to engage with the Department of Health and Social Care on this issue, as they were understandably working heavily on issues relating to the coronavirus epidemic. There has been an impact of the epidemic on the work of the GEO with regards to their ability to undertake responsive work, due to the re-deployment of some employees.

b) **The budget / spending review:**

I. The Commission have yet to have final confirmation of its budget for 2021 /22. A letter had been drafted to send to the Cabinet Office in respect of this.

c) **Changes at Executive Group:**

I. Changes to the Executive Group would be taking place over the coming weeks, returning it to full strength. Libby McVeigh had returned from adoption leave, taking up her role as Director of Strategy and Governance. Bill Malloy

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will join as the Finance Director on 08 June 2020; Cath Denholm will join as permanent Executive Director for Corporate Services on 01 June 2020 and Adam Sowerbutts will join next week as the Legal Director. Jackie Killeen had started the previous week as Director of Compliance.

d) **Stakeholder engagement:**

I. On 11 May, the CEO convened a group of stakeholders representing older peoples' organisations. They were very keen to work with the Commission and share intelligence. We are looking at an early public statement to amplify their messages. This would feed into the Commission's work relating to the exit from 'lockdown', in looking at the equalities implications for older people.

II. The Mayor of London has contacted the Commission to request a meeting to discuss the impact of the coronavirus on BAME groups. The CEO and Chair will meet next week to discuss this.

III. Members advised that Leeds City Council Chief Executive Tom Riordan had been asked by the government to take a key role in its contact tracing programme across the country. A member of the Board has links with Tom Riordan and offered to facilitate an introduction as the Commission could have some real impact here at local and regional levels, particularly with the health sector and local government. The CEO welcomed this opportunity.

e) **Criminal justice inquiry:**

I. Stakeholders have been in contact with regards to the inquiry into the treatment of disabled defendants in the criminal justice system. The CEO advised that the intention was to get the full report out as soon as possible, to ensure that the Commission was influencing the model given the pandemic has had a great influence in this area. The Board agreed that the Commission should pursue this work, but noted that the Commission needed to ensure its report reflected the context of the pandemic.

f) **Windrush Review:**

I. A Section 31 assessment was proposed, to focus on Home Office policies which require an increased level of documentary evidence of immigration status. It would specifically look at the PSED duty to have due regard to the need to advance equality of opportunity between different groups, with a particular focus on the colour aspect of the race protected characteristic. It would use the opportunity created by the Williams 'Windrush Review', as well as the evidence generated by it, and be part of a wider response including thought leadership on structural race disadvantage. Stakeholder engagement in this area was to be sharp and focused. The Board agreed with this proposal and an investigation should proceed.

g) **Impact Report**

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I. The Board were provided with a copy of the Commission's Impact report 2019-20, which the CEO encouraged Commissioners to read. This showed impact in a clear, concise and user friendly way and could be read alongside the Annual Reports and Accounts.

h) **'Three Nations' working**

I. There is scope and appetite for the Commission to do more in a convening role in England in terms of the interest of non-government players, civil society, academic, and business in levelling up ('Building better forward'). The Commission will consider whether it wants this work to be focussed on the devolved / regional / local conversation i.e. local video conferences; joined up meetings with local groups, or think about convening a broader audience/s.

II. Although data highlighted how domestic abuse rates have increased in England since the pandemic, the data is not clear in Scotland, so it is possible that there is underreporting.

III. A letter that had been sent to the Scottish First Minister to offer assistance has been cited in the Scottish Government's further information following the original publication 'Covid-19: A Framework for Decision Making'. Scotland Committee members had agreed that the Commission should be proactive to follow up with Scottish Government, proposing areas where the Commission could add value.

IV. The Wales Committee were keen to contribute their knowledge on how the epidemic is exacerbating existing inequalities particularly by ethnicity, age, disability, gender and faith.

V. The Wales Committee were concerned that the focus of the groups set up since the pandemic (the Coronavirus Moral and Ethical Advisory Group and the group looking into the disproportionate impact of the pandemic on BAME people in Wales) were too focussed on medical and health impacts and not giving sufficient weight to the wider determinants of health e.g. socio-economic disadvantage. Members of the Board expressed their interest in being engaged in this work.

VI. The Interim Chair of the Wales Committee updated the Board that the Welsh Government has now introduced a socio-economic sub-group of the BAME group which the Commission feeds into. The Wales Committee, however, believe that there is still an ongoing process to remind such groups to integrate these issues better.

VII. Members advised the Board that, given the recent divergence in approach to easing the lockdown across GB, the Commission needed to be mindful of the impact on the Commission's coronavirus strategy. For example, the Welsh

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Government have introduced five parameters for coming out of lockdown, one of these is to ensure that there is an increase in equality.

g) **Working arrangements during the coronavirus pandemic:**

I. Members queried the approach being taken by the Commission as the coronavirus lockdown is eased. The Executive advised that the Commission is able to work from home and does not meet any of the criteria of organisations permitted to to return to the office. In addition, although social distancing is possible in some of the Commission's offices, specifically with regards to desks, it would be difficult to achieve this in the communal areas. Public transport was also difficult to avoid for many employees, specifically those based in London. For these reasons, Commission staff would remain working from home for the time being.

II. Discussion has begun with regards to a programme of returning to offices when it was deemed appropriate. Consideration was being given to other government bodies' plans and whether they have anticipated dates in place to return to offices. The overarching aim was to be confident that it was safe and to be sensitive and proportionate to people's individual circumstances.

h) **Estates:**

I. Plans were continuing to make progress in respect of the acquisition of the new London office, the lease negotiation and fit-out.

II. Members enquired whether consideration had been given to the changes the pandemic had brought to office and home working. They noted that there had been some recent guidance to government owned buildings with regards to what they can / cannot do, so the Commission needed to acte in accordance with what owners and operators of the buildings will allow. The Executive assured the Board that they are considering the current climate and guidance with the acquisition of new offices.

**7.2 Finance Report:**

7.2.1 The Board reviewed the forecast outturn, year to date performance, and forecast financial risks at Period 12, as set out in the Finance Report (EHRC 89.04). It noted that there was a resource del underspend of £206k (1.18%) of which £151k (0.87%) is directly corona virus related and £55k (0.31%) is non-corona virus related.

7.2.2 The Executive Team were happy with these figures, but noted that there was always room for improvement. The new Finance Director would work on lessons learnt and would bring a lot of expertise to this area. In order to build on work around legal impact, a paper on the Commission's cost benefit analysis of how it manages its legal costs across the year would be provided in September.

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7.2.3 Malcolm Cornberg had circulated in advance of the meeting a list of "dialling up measures" which had been approved by the Executive Group and had been delivered by the financial year-end.

7.2.4 Members agreed that the management oversight of finances had greatly improved, specifically in quarter four, and that there had been significant progress in improving financial reporting generally.

## 8. Strategic Item

### 8.1 Revised Business plan and Coronavirus strategy.

8.1.1 Melanie Field spoke to the paper on the Commission's Coronavirus strategy and supporting documentation; an updated version of the highlight report ('plan on a page'); a resource report and a horizon-scanning report. (EHRC 89.05 and Annex's).

8.1.2 A Board call had taken place on 23 April, where members had discussed the revised business plan and the Commission's response to the equality and human rights issues relating to the pandemic. Based on feedback from the Board, the Executive had produced a 'plan on a page' and shared this with the Board on 03 May.

8.1.3 Melanie Field advised that the Commission was making good progress against the highlight report, which has been further updated to reflect the three-nation approach. This would be updated on a weekly basis. Focus will now be on the coronavirus-related work, where the Commission has robust and active governance and progress-monitoring in place. The horizon-scanning weekly report informs the Commission's approach and actions and ensures that it can respond to external changes quickly and effectively.

8.1.4 Melanie Field asked for the Board's steer on whether the Commission is taking sufficient account of diverging views across the three nations and whether the Board agreed with the next priority work strand as equality issues relating to the exit from lockdown, e.g. for older people.

8.1.5 Members asked whether the strategy had considered BAME disproportionality across nations. The Executive advised that an across nations approach had been taken to this issue and the concern was that the focus of other organisations was on epidemiological analysis. The Commission was calling for a more comprehensive approach and officers were working with Public Health England; Race Disparity Unit and the Office of National Statistics to get a fuller sense of the data. The Commission would be submitting evidence to Public Health England and the Wales Committee would also be making contributions to the Welsh response.

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8.1.6 Members raised the issue of the creation of a 'two tier' approach in employment as the UK comes out of lockdown, for example, employees who are have been tested for the virus and can return to work and those who have not and may not, therefore, be able to go back to work. Given those who are tested are more likely to be older people, there was a possibility that people may feel discriminated against. There are also those employees who feel anxious about returning to work. The CEO of the Health and Safety Executive (HSE) has also spoken about employee's inability to go back to work if the workplace was not safe. The Commission should consider working with HSE, as regulator to regulator, specifically with regards to the Public Sector Equality Duty (PSED).

8.1.7 Members were assured that an equality based approach had been taken to consideration of individuals returning to the workplace, focused on protected characteristics. Officers had already had some contact with HSE and the Commission was looking at where it could use its enforcement powers. The Commission's internal steering group was ensuring its strategy was forward looking and employment was highlighted as a key area.

8.1.8 Members proposed that now was a good time for the Commission to consider how and where other regulators may be better placed to do some aspects of the work the Commission was considering in its strategy. This could free up the Commission to be better resourced in other areas, for example investigations. The Executive advised members that the Commission was keen to be agile, and were looking at internal resource on a weekly basis. They further noted that the strategy was to consider where it could have the greatest impact. For example: older people in care homes; BAME data; gender issues (women remaining at home as care givers longer term).

8.1.9 Members queried whether, given the UK Government is requesting that GEO focuses on data analysis, the Commission should focus on its convening power and leadership roles in bringing data sets together for other organisations to use. This could be reflected in the next Is Britain Fairer (IBF). The Executive agreed.

8.1.10 Devolved / reserved considerations were discussed, in that there was a clear divergence of policy approaches across nations (eg care workers; the approach to free school meals etc). There were also areas of improvement and good practice that nations could share. It was agreed that the Commission's strategy would reflect these differences.

8.1.11 The Board discussed partnership strategies, for example in areas of domestic violence; exam malpractice; hate crime and carers rights. Many organisations whose work focuses on these areas were keen to work with the Commission.

8.1.12 Board members agreed that the debate on civil liberties and human rights would increase as the lockdown lifts. The Commission needed to keep up to date on the divergence across the UK. It was noted that whilst Northern

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Ireland was not part of the Commission's remit, lessons could be taken from their different approaches, particularly in respect of civil liberties and having a social approach.

8.1.13 Members discussed the Commission's ongoing work on stakeholder management and the effect of the epidemic on the Commission's workforce capacity. To resource the emerging work, the resource report (EHRC 89.05 annex A) looked at the balance of putting in place the right skills and experience quickly whilst minimising the level of disruption. The Commission had already made changes to the way it conducts stakeholder activity (eg webinars with NHS employers, video conference meetings with older people's organisations; roundtables; and continuing to engage with Regulators, Inspectors and Ombudsmans). The steering group will continue to improve its engagement using these methods.

8.1.14 The Board agreed that the Commission's impact was paramount to the success of the new strategy and that this needed to be captured in the highlight reports. The Executive assured the Board that impact will be set out more clearly in the coming weeks.

8.1.15 The Chair summarised that the Commission had made good progress on its communications and engagement since the pandemic, but that there was a need to highlight impact further; to continue to consider three nations approaches; to increase partnership working where needed; to take into account the divergence of policy approaches across nations and to follow up on stakeholder engagement methods where responses have not been forthcoming. **Action: Melanie Field to consider.**

## 9. Any other business

9.1 Members requested that the Secretariat team organise opportunities for Commissioners to meet with the new members of the executive team starting in the coming weeks. **Action: Callum MacInnes.**

9.2 With no other business being raised, David Isaac thanked Board members and staff for their contributions, and drew the formal meeting to a close. He also thanked Malcolm Cornberg, Dean Button, Tessa Griffiths and Sarah Maclean for their invaluable work at the Commission as they move on to pastures new.

9.3 The next formal Board meeting would take place on 02 July 2020.

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